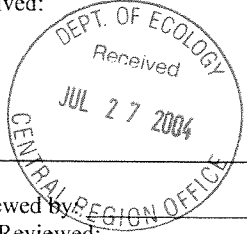


KITTITAS COUNTY  
WATER CONSERVANCY BOARD  
Application for Change/Transfer  
Record of Decision

For Ecology Use Only	
Received:	
Reviewed by:	_____
Date Reviewed:	_____

Applicant: Richard Snowden

Application Number: KITT-03-22

This record of decision was made at an open public meeting of the Kittitas County Water Conservancy Board held on June 15, 2004.

July 20, 2004 sec

☒ **Approval:**

The Kittitas County Water Conservancy Board hereby **grants** conditional approval for the water right transfer described and conditioned within the report of examination on June 15, 2004 and submits this record of decision and report of examination to the Department of Ecology for final review or consideration.

☐ **Denial:**

The Kittitas County Water Conservancy Board hereby **denies** conditional approval for the water right transfer as described within the report of examination on \_\_\_\_\_, and submits this record of decision to the Department of Ecology for final review or consideration.

Signed:



Mary Burke, Chair  
Kittitas County Water Conservancy Board

Date: 07.20.04 sec  
06-15-04 Approves ☒  
Denies ☐  
Recuse ☐



Pat Deneen, Member  
Kittitas County Water Conservancy Board

Date: 07.20.04 sec  
06-15-04 Approves ☒  
Denies ☐  
Recuse ☐



Tom Chini, Member  
Kittitas County Water Conservancy Board

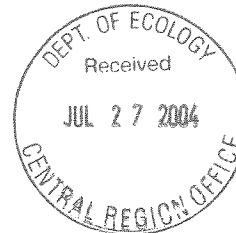
Date: 07.20.04 sec  
06-15-04 Approves ☒  
Denies ☐  
Recuse ☐

Mailed to the Department of Ecology Central Regional Office of Ecology, via certified mail, and other interested parties on \_\_\_\_\_.



KITTITAS COUNTY  
WATER CONSERVANCY BOARD  
Application for Change/Transfer

Report of Examination  
TO APPROPRIATE PUBLIC WATERS OF THE STATE OF WASHINGTON



☒ Surface Water ☐ Ground Water

DATE APPLICATION RECEIVED OCT. 21, 2003	PERMIT NUMBER 043215	CERTIFICATE NUMBER CLAIM NO. 00366, SUB- BASIN NO. 9	CHANGE APPLICATION NUMBER KITT-03-22
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NAME  
RICHARD SNOWDEN  
ADDRESS (STREET) (CITY) (STATE) (ZIP CODE)  
190 UPMTANUM ROAD ELLENSBURG WA 98926

Changes Proposed:

☒ Point of Diversion/Withdrawal ☐ Place of Use ☐ Purpose ☐ Temporary ☐ Other

DECISION HISTORICAL SUMMARY

Existing Use						Proposed Use					
QUANTITY, TYPE OF USE, PERIOD OF USE 1. 0.80 cfs, 114 af/y for irrigation of 35 acres from April 1 through October 31 each year under priority date of May 24, 1884. See COURT CLAIM 00366, Page 496, REPORT OF REFEREE, Vol. 43, Part. II, Sub-basin No. 9; COURT CLAIM NO. 00366, Page 244, SUPPLEMENTAL REPORT OF REFEREE, Vol. 43A, Part I, Sub-basin No. 9. Note that this amount has been changed pursuant to Order No. 03WRHQ-5621 to 1.5 cfs, 350 af/y, but the SECOND SUPPLEMENTAL REPORT OF REFEREE has not been released, thus not confirming this change in quantity.						QUANTITY, TYPE OF USE, PERIOD OF USE 1. Applicant proposes to change the point of diversion only. 0.80 cfs, 114 af/y for irrigation of 35 acres from April 1 through October 31 each year under priority date of May 24, 1884. See COURT CLAIM 00366, Page 496, REPORT OF REFEREE, Vol. 43, Part. II, Sub-basin No. 9; COURT CLAIM NO. 00366, Page 244, SUPPLEMENTAL REPORT OF REFEREE, Vol. 43A, Part I, Sub-basin No. 9. Note that this amount has been changed pursuant to Order No. 03WRHQ-5621 to 1.5 cfs, 350 af/y, but the SECOND SUPPLEMENTAL REPORT OF REFEREE has not been released, thus not confirming this change in quantity.					
Point of Diversion or Withdrawal						Point of Diversion or Withdrawal					
SOURCE		TRIBUTARY OF (IF SURFACE WATER)				SOURCE		TRIBUTARY OF (IF SURFACE WATER)			
Wilson Creek		Yakima River				Wilson Creek		Yakima River			
NO.	-	-	SECTION	TOWNSHIP N.	RANGE,	NO.	-	-	SECTION	TOWNSHIP N.	RANGE,
1	NE	SW	2	17N	18E	1	NE		11	17N	18E
Place of Use						Place of Use					
LEGAL DESCRIPTION OF LANDS WHERE WATER IS PRESENTLY USED: 1. A portion of the NE _ Sec. 11, T. 17N, R. 18 EWM, known as Tax 27; and 2. A portion of the North _ of the SE _ Sec. 11, T. 17N, R. 18 EWM, both of which are West of the right-of-way of the Burlington Northern Railroad.						LEGAL DESCRIPTION OF LANDS WHERE NEW USE IS PROPOSED 1. A portion of the NE _ Sec. 11, T. 17N, R. 18 EWM, known as Tax 27; and 2. A portion of the North _ of the SE _ Sec. 11, T. 17N, R. 18 EWM, both of which are West of the right-of-way of the Burlington Northern Railroad.					
NO.	-	-	SECTION	TOWNSHIP N.	RANGE,	NO.	-	-	SECTION	TOWNSHIP N.	RANGE, (
1	NE		11	17N	18E	1	NE		11	17N	18E
2	N _	SE	11	17N	18E	2	N _	SE	11	17N	18E

SEPA

The board has reviewed the provisions of the State Environmental Policy Act of 1971, Chapter 43.21C RCW and the SEPA rules, chapter 197-11 WAC and has determined the application is: ☒ Exempt ☐ Not exempt

Water Right Priority Date: May 24, 1884

BOARD'S TENTATIVE DETERMINATION

MAXIMUM CUB FT/ SECOND 1.5	MAXIMUM GAL/MINUTE	MAXIMUM ACRE-FT/YR 350	TYPE OF USE, PERIOD OF USE Irrigation of 35 acres from April 1 through October 31 each year			
SOURCE Wilson Creek			TRIBUTARY OF (IF SURFACE WATER) Yakima River			
AT A POINT LOCATED: PARCEL NO.	-	-	SECTION	TOWNSHIP N.	RANGE	WRIA
1	NE		11	17N	18E	KITTITAS
LEGAL DESCRIPTION OF PROPERTY ON WHICH WATER IS TO BE USED						

1. That portion of the NE _ Sec. 11, T. 17N, R. 18 EWM, known as Tax 27; and					
2. That portion of the North _ of the SE _ Sec. 11, T. 17N, R. 18 EWM, both of which are West of the right-of-way of the Burlington Northern Railroad.					
For a total of irrigation on 35 acres.					
PARCEL NO.	-	-	SECTION	TOWNSHIP N.	RANGE,
1	NE		11	17N	18E
2	N _	SE	11	17N	18E

## DESCRIPTION OF PROPOSED WORKS

The purpose of the request for a change of diversion is to move from the current unscreened gravity fed diversion on Wilson Creek to a screened pump diversion at a new site approximately 3000 feet downstream on Wilson Creek as part of a joint Yakama Nation, BPA, and Irrigator (Snowden) Project. There are no other diversions on Wilson Creek between the current existing diversion and the proposed new diversion. Bull Canal Company drains into Wilson Creek between the current existing diversion and the proposed new diversion.

## DEVELOPMENT SCHEDULE

BEGIN PROJECT BY THIS DATE: April 1, 2005	COMPLETE PROJECT BY THIS DATE: April 1, 2009	COMPLETE CHANGE AND PUT WATER TO FULL USE BY THIS DATE: April 1, 2009
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## REPORT

See WAC 173-153-130 - The following sections may be expanded onto additional pages.

## **BACKGROUND**

### **1. Description of Existing Water Right**

Snowden's Claim No 00366, Subbasin No. 9, is for the diversion of water from Wilson Creek for irrigation of 35 acres. That Claim under adjudication in State v. Acquavella, Yakima County Superior Court Cause No. 77-2-01484-5, is for a maximum instantaneous flow of 0.80 cfs and an annual water diversion of 114 acre feet per year. The SUPPLEMENTAL REPORT OF THE REFEREE, Subbasin No. 9, Page 248 confirmed a right of 0.80 cfs and 114 acre feet per year, to which Snowden has filed an Exception, additional evidence has been taken, an Order has issued, but the Second Supplemental Report of the Referee has not yet been issued.

Snowden desires to change the point of diversion on Wilson Creek for that amount of water that has been confirmed in the SUPPLEMENTAL REPORT OF THE REFEREE, Subbasin No. 9, page 248 (0.80 cfs and 114 acre feet per year), with the understanding that should the Second Supplemental Report of the Referee, or the Acquavella Court, confirm additional water rights as requested, that Snowden reserves the right to incorporate any additional water rights confirmed for these same lands into this proposed change of diversion, as it would be strictly an administrative ministerial adjustment.

Snowden's water right is in good standing. As a result of its investigation, the Board has made a determination that the water rights are valid and subject to change. The full-face amount of the water right is considered to be transferable. The Board quantifies the right for the purpose of the requested changes at a maximum of the currently confirmed and supported amounts of 0.80 cfs and 114 acre feet per year for irrigation on 35 acres, subject to administrative ministerial adjustment if additional water rights are confirmed by the Acquavella Court or the Second Supplemental Report of the Referee to be forth coming. The Board considers this water right (0.80 cfs and 114 acre feet per year) to have been affirmed by the Acquavella Court and subject to change based upon review of the application, records and by on-site investigation, as set forth below, supports any additional water rights which may be awarded by the Referee or the Acquavella Court (up to a total of 1.5 cfs and 350 acre feet).

The proposed change of diversion application is KITT-03-22.

### **2. Previous Change Decisions**

No previous changes or decisions have been made which would influence this decision beyond the confirmation of this right by the Report of the Referee.

## **COMMENTS AND PROTESTS**

Public Notice of the application to change point of diversion was made in accordance with applicable rules. Publication in the Ellensburg Daily Record was on April 9, 2004, and April 16, 2004, with notice of 30 days for additional information or protest. The public notice was further distributed to other entities as required, including state resource agencies, tribes and/or other interested parties. No requests for additional information or protests were received by the Board from these parties or any other sources. The Board did receive two (2) letters in support of the application for change in point of diversion.

### **1. Names and Addresses:**

- A. Brent D. Renfrow  
District Habitat Biologist  
Department of Fish and Wildlife, State of Washington

Ellensburg District Office  
201 North Pearl  
Ellensburg, WA 98926

B. Melvin R. Sampson  
Project Manager  
Yakima-Klickitat Fisheries Project  
Yakama Nation Fisheries  
Confederated Tribes and Bands of the Yakima Indian Nation  
P.O. Box 151  
Toppenish, WA 98948

**2. Description:**

- A. 10/1/03 letter in favor of moving the point of diversion from an unscreened gravity fed diversion to a screened pump diversion downstream approximately 3000 feet on Wilson Creek to a more practical location benefiting resident fish and anadromous salmon and steelhead by preventing death and improving instream flow.
- B. 9/10/03 letter in favor of moving the point of diversion in conjunction with the joint BPA, Yakama Nation, and Irrigators (Snowden) Project to provide a screened pump and the associated piping necessary to replace the currently unscreened gravity diversion, benefiting salmon and steelhead populations and conserving water by eliminating seepage loss from the current unlined ditch.

**3. Board Analysis:**

- A. State of Washington Department of Fish and Wildlife are in favor of Snowden's application for change of point of diversion and there is third party governmental evidence that the change of diversion will be beneficial to fish and the public.
- B. Yakama Nation is in favor of Snowden's application for change of point of diversion and there is third party Native Tribe evidence that the change of diversion will benefit fish, the Yakama Nation, and the public.

## **INVESTIGATION**

**1. Description of the Proposal**

The applicant owns and farms the property of the existing claim, which is located at 190 Umptanum Road, Ellensburg, Washington, Kittitas County, 98926. Snowden would like to change the point of diversion from the current unscreened gravity diversion on Wilson Creek which is located in the SW  $\frac{1}{4}$  of Section 2, Township 17 North, Range 18 East, Willamette Meridian, to a new location approximately 3000 feet downstream on Wilson Creek in conjunction with a Joint BPA, Yakama Nation, and Irrigator (Snowden) Project funded by BPA and administered by the Yakama Nation under the "Safe Access Project."

Elimination of the unscreened diversion will prevent the alleged entrainment and death of resident fish and anadromous salmon and steelhead in irrigation ditches. Elimination of the open unlined ditch and installation of a pump and piping system will also greatly improve water use efficiency. The most practical location to move the Snowden point of diversion to is a point 3000 feet downstream, which is located on the Snowden property. Maintenance and monitoring capabilities would be enhanced at this new location.

The Acquavella Court has approved and recognized the water rights of Snowden of 0.80 cfs and 114 acre feet per year. This grant has been appealed. Under Order 03WRHQ-5621, 1.5 cfs and 350 acre-feet per year have been approved, but the Second Supplemental Report of the Referee has not been released confirming these amounts. Therefore, Snowden currently requests a change of diversion for the approved amounts, with the understanding that when the Second Supplemental Report confirms 1.5 cfs and 350 acre-feet per year, or any portion of that request, those awarded water rights will be applied to this application for change of diversion by administrative ministerial action.

The owner proposes to continue irrigating his 35 acres. There is no enlargement of the water usage or property to be irrigated.

*A. Development Schedule*

Snowdens propose to install the pump and piping system on Wilson Creek. BPA funding of the Yakama Nation Safe Access Project is currently available. It is proposed that a five-year development schedule be allowed. After this period of time, Ecology may choose to inspect the installation of the system for compliance with this change in point of diversion.

*B. Affect on Other Water Rights*

No other diversions exist on Wilson Creek between the existing diversion and the proposed diversion. Bull Canal Company operates Bull Ditch, which empties at various points into Wilson Creek and subsequently diverts that same water out of the Creek at a different location. Bull Ditch empties into Wilson Creek between the existing diversion point and the proposed diversion point. It then diverts water from Wilson Creek at a point downstream from the proposed diversion point.

Snowden understands that he will not be allowed to take any of Bull Canal Company's Yakima River water rights.

C. *Instream Flows*

This change in point of diversion is to a point downstream from the current diversion point. Therefore, there is no adverse impact on instream flows of Wilson Creek.

**2. Narrative Description of any Other Water Rights Associated**

*Point of Diversion:* The existing Point of Diversion is not in common with any parties. The only other party that may be affected by this change of diversion is Bull Canal Company, as discussed in section (1)(B)

*Existing Place of Use:* The current place of use is on 35 acres located North of I-90 and West of the Burlington Northern Railroad Tracks, the more complete legal description is located above.

*Proposed Place of Use:* The place of use is not being changed through this application.

**3. Public Interest**

The Board finds that the changes requested by Snowden are consistent with the public policy objectives of the state of Washington to provide for efficient use of water resources and to provide for economic development. Because the current system has no fish screens, there are benefits to fish resources in replacing the old diversion system with one that involves screened pumping and piping system. The screened pump will prevent the alleged entrainment and death of resident fish and anadromous salmon and steelhead. The proposed system also will remedy some of the water loss problems due to the unlined open ditch. The proposed system will replace the earthen ditch and its conveyance loss with an efficient piping system that will conserve water by eliminating seepage loss over the distance of the ditch. Moving the point of diversion will provide a practical location for the new system and provide improved instream flow for fish. The Board finds that approval of the requested change in point of diversion will not prove detrimental to the public interest.

**4. Relinquishment and Abandonment**

Snowden has been continuously using his water rights for the statutory period. The water rights have not been relinquished or abandoned.

**5. Geologic, Hydrologic, Scientific Investigations**

The Board has reviewed the application and additional support information provided by Snowden. The applicant has provided all the information he had, including reference materials, personal communications, and photographs and accounts of the land and its water usage.

The Wilson Creek subbasin is relatively well known, and the Court proceedings have been reviewed by the Board. With the exception of Bull Canal Company, there are no other rights that may be affected or may be in conflict with the existing claim or requested change in diversion point, as requested by this application. The letters in support of the diversion point change, as identified above, have been reviewed by the Board as well.

**CONCLUSIONS**

The Kittitas County Water Conservancy Board has jurisdiction to consider this application.

**1. Valid Right**

A valid water right for irrigation in the amount of 0.80 cfs and 114 acre feet per year for 35 acres from April 1 through October 31 each year exists for the Snowden property. These quantities have been properly excepted to by Snowden, who is requesting 1.5 cfs and 350 acre feet per year for 35 acres based on actual measurements and past and current usage. Snowden's exceptions have been evaluated and Ordered in

Order 03WRHQ-5621, but have not been associated into a Report of the Referee. The exceptions are awaiting the Referee's Second Supplemental Report.

Board members Tom Chini and Pat Deneen conducted a field visit on May 7, 2004. The field examination consisted of reviewing the current point of diversion and new point of diversion areas, as well as the property subject to this transfer. The field investigation confirmed the information given to the Board by Snowden. The filed investigation also confirmed that the property requesting the change requires more than normal irrigation quantities for normal farming due to the soil content.

Transferable quantities are the same as the water right transferred. There will be no enlargement of existing rights with this requested change in diversion point. There is no change in place of use nor is there a change in acreage of irrigation.

## **2. Relinquishment or Abandonment**

There has been no relinquishment or abandonment of any water rights affected by this application.

## **3. Hydrologic Analysis**

The current irrigation system consists of an unlined gravity flow ditch extending from the point of diversion to the Snowden property. The annual consumptive quantity as approved by the Acquavella Court is 0.80 cfs and 114 acre feet per year for irrigation. This quantity may be subject to increase upon issuance of the Second Supplemental Report of the Referee for Subbasin No. 9.

## **4. Issues Raised**

No requests for additional information and/or protests were received following publication and distribution of the public notice as required by law. The Board did receive two (2) letters of support for the change of diversion. No response to these letters is required.

## **5. Impairment of Existing Uses**

There are no adverse comments, protests, or adverse communication received. The requested change in point of diversion will not impair any existing water rights. Snowden understands that Bull Canal Company has water rights in Wilson Creek and the Yakima River. Snowden will use the measuring device located at the current point of diversion to determine the amount of water available to be diverted in Wilson Creek at the proposed new point of diversion. Yakima River water rights owned by Bull Canal Company should not be impaired.

## **6. Authority/Public Interest**

This transfer is authorized, as a change in point of diversion, without detriment or injury to existing rights, pursuant to RCW 90.03.380. In addition, it is within the public interest because the new diversion point will provide for more economic and efficient use of the state's water resources.

## **DECISION PROCESS**

On 10/21/03 an application was submitted to the Kittitas County Water Conservancy Board.

On April 9, 2004 and April 16, 2004 publication was made in the Ellensburg Daily Record of the proposed changes to the existing water right claim to change the point of diversion.

On April 16, 2004 the Daily Record provided an affidavit of publication for the above-referenced public notice.

On May 7, 2004, an on-site inspection of the properties involved in this water right claim and proposed change was conducted by Tom Chini and Pat Deneen, Kittitas County Water Conservancy Board members.

## **RECOMMENDATIONS**

It is our recommendation that the existing point of diversion be changed, as proposed, in favor of a new diversion approximately 3000 feet downstream on Wilson Creek for the current verified amount of 0.80 cfs and 114 acre feet per year, subject to increase if the State v. Acquavella adjudication increases that verified amount.

Screening of the pumps and system will be required in accordance with Washington Department of Fish and Wildlife requirements.

A development schedule of up to five (5) years may be allowed.

Measuring of the water at the pump at the diversion site will be required.

The Board decision is to conditionally approve the proposed request for change in point of diversion. In conditionally approving Snowden's application, the Board must advise the applicant that they are not permitted to proceed to affect the proposed transfer until a final decision is made by the Director of the Department of Ecology.

## **PROVISIONS AND CONDITIONS**

### **1. Conditions and Limitations**

- A. An approved measuring device shall be installed and maintained in accordance with the rule "Requirements for Measuring and Reporting Water Use" Chapter 173-173 WAC. Water use data shall be recorded monthly and submitted annually to the Department of Ecology by January 31<sup>st</sup> of each calendar year, typically. Ecology will provide forms and electronic data entry forms.
- B. Department of Ecology personnel, upon notice and request and the presentation of proper credentials, shall have access at reasonable times to the records of water use indicated above, and to inspect the measuring devices.
- C. Snowden understands that he will not be allowed to take any of the Bull Canal Company's Yakima River water rights.

### **2. Mitigation**

None required due to no negative impacts.

### **3. Schedule**

A development schedule of five (5) years will be allowed for the planning and development of the irrigation system as proposed.

Signed at Ellensburg, Washington

This 15<sup>th</sup> day of June, 2004  
20<sup>th</sup> July



Tom Chini, Chair  
Kittitas County Water Conservancy Board

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**For attachments not included or for more information please contact:**

**Daniel R. Haller, P.E.**  
**Water Resources Program**  
**Department of Ecology, Central Region Office**  
**15 W Yakima Ave, Suite 200**  
**Yakima, WA 98902-3452**  
**(509) 454-4255 phone**  
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